**Kingsport Press *and* James Earl Ball.** Case 10–CA–18902

24 April 1984

## DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS HUNTER AND DENNIS

On 27 October 1983 Administrative Law Judge William N. Cates issued the attached decision. The Respondent filed exceptions and a supporting brief.[1]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[2] and conclusions[3] and to adopt the recommended Order as modified.

The Respondent excepts, inter alia, to the judge's recommended remedy which provides that the Respondent offer Ball reinstatement. The Respondent argues that Ball's derogatory and profane remarks about his supervisor at a management-employee meeting and Ball's alleged threats made on the life of that supervisor rendered him unfit for further employment with the Respondent. In adopting the judge's remedy, we note particularly his conclusion, which the record supports, that Ball's conduct was no better or worse than any other employee's conduct at the meeting and that Johnson seized on Ball's comments as a convenient excuse to rid himself of an employee whose protected concerted activities had become an annoyance to him. Thus, the Respondent has permitted other employees to engage in such conduct without discipline and it cannot hold Ball to a different standard simply because of his protected concerted activity. As the Board stated in *Holiday Inn of America of San Bernadino*, 212 NLRB 280 (1974):

> We note that nothing in this decision should be interpreted to preclude the Respondent from specifying, for the future, reasonable rules of conduct applicable to all employees or from enforcing such rules in a nondiscriminatory manner. We add this admittedly somewhat gratuitous comment because we wish to be sure that neither the discriminatee here nor any other employee could construe this decision as some kind of Federal license to engage in the kind of conduct here involved. On the other hand any employer who freely tolerates such conduct may not suddenly find it offensive only when committed by an employee who exercises his rights to engage in concerted activity.

Additionally, we adopt the judge's finding that the comment Ball made as he was being escorted from the plant was too ambiguous to constitute a threat. We also note that the judge discredited testimony that Ball had previously made serious threats on the life of the supervisor, and that the judge found that the alleged threats were not mentioned as a reason for Ball's termination in his termination letter or in the statement of position given to the Regional Office over 2 months after Ball's termination. In adopting the judge's decision that Ball was discharged in violation of Section 8(a)(1), we emphasize that we are not addressing a case where an employee made profane comments which the employer did not tolerate from other employees nor a case where an employee who was discharged for his protected concerted activity subsequently threatened the life of a supervisor.

## ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Kingsport Press, Kingsport, Tennessee, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 1(a) and reletter the subsequent paragraphs.

"(a) Discharging and thereafter failing and refusing to reinstate its employees because they have engaged in protected concerted activities with other employees for the purposes of collective bargaining and other mutual aid and protection."

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[1] The Respondent has requested oral argument. This request is hereby denied as the record, the exceptions, and the brief adequately present the issues and the positions of the parties.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings. Additionally, we are satisfied that the Respondent's contentions that the judge was biased are without merit. There is nothing in the record to suggest that his conduct at the hearing, his resolutions of credibility, his rulings, or the inferences he drew were affected by any bias or prejudice.

[3] We adopt the judge's conclusion that the Respondent violated Sec. 8(a)(1) of the Act by discharging employee Ball for protected concerted activity which he engaged in with or on the authority of other employees. See *Meyers Industries*, 268 NLRB 493 (1984). Such activity included filing grievances with other employees or assisting other employees in filing grievances, preparing and circulating petitions, and presenting the voluntary layoff question, on behalf of himself and others, at the 10 September 1982 meeting with management which precipitated his discharge. We also adopt the judge's conclusion that the Respondent has not established that it would have discharged Ball even in the absence of the above conduct. In view of our conclusion that the Respondent violated Sec. 8(a)(1) of the Act by discharging Ball, we find it unnecessary to pass on the judge's conclusion that Ball's discharge violated Sec. 8(a)(3) and we shall modify the judge's recommended Order accordingly.

2. Substitute the attached notice for that of the administrative law judge.

## APPENDIX

### NOTICE TO EMPLOYEES
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
### An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

Accordingly, we give you these assurances:

WE WILL NOT discharge employees because they engage in concerted activities with other employees for the purposes of collective bargaining and other mutual aid and protection.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer James Earl Ball immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed and WE WILL make him whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest.

WE WILL notify James Earl Ball that we have removed from our files any reference to his September 1982 discharge and that the discharge will not be used against him in any way.

KINGSPORT PRESS

## DECISION

### STATEMENT OF THE CASE

WILLIAMS N. CATES, Administrative Law Judge. This matter was tried before me on June 13-16, 1983, in Kingsport, Tennessee. The hearing was held pursuant to a complaint and notice of hearing issued by the Acting Regional Director for Region 10 of the National Labor Relations Board, herein the Board, on March 17, 1983, and is based on a charge which was filed by James Earl Ball, an individual, herein Ball, on January 17, 1983. The complaint in substance alleges that Kingsport Press, herein Respondent, discharged Ball on or about September 10, 1982, and thereafter failed and refused to reinstate him because he engaged in concerted activities with other employees for the purposes of collective bargaining and other mutual aid and protection, and because of his membership in and activities on behalf of United Steelworkers of America, AFL-CIO, herein the Union, and that his discharge violated Section 8(a)(1) and (3) of the National Labor Relations Act, herein Act. The issues herein were joined by Respondent's answer filed with the Board on March 28, 1983, wherein it denied the commission of the alleged unfair labor practices.

On the entire record made in this proceeding, including my observation of each witness who testified herein, and after due consideration of briefs filed by the General Counsel and counsel for Respondent, I make the following

### FINDINGS OF FACT

#### I. JURISDICTION

At all times material herein, Respondent, a Tennessee corporation, maintained an office and place of business at Kingsport, Tennessee, where it engaged in the manufacture of books and other printed material. During the year preceding the issuance of the complaint and notice of hearing, Respondent, in the course and conduct of its business, sold and shipped from its Kingsport, Tennessee facility finished products valued in excess of $50,000 directly to customers located outside the State of Tennessee.

It is admitted, and I find, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

#### II. LABOR ORGANIZATION

The complaint alleges, it is admitted, and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

#### III. THE ALLEGED UNFAIR LABOR PRACTICES

##### A. *Background*

Although most of the critical facts of the instant case arose at, or were in some manner related to, a meeting that took place on September 10, 1982,[1] some background of the labor relations history at Respondent is necessary in order to understand the events of September 10.

Respondent has a long history of labor relations dating back to the time when it recognized a number of unions for various of its employees in 1935. Until 1963, there were five separate bargaining units in existence at Respondent's Kingsport, Tennessee facilities. In 1963, the number of bargaining units increased to eight, and also in that same year an economic strike was commenced in-

[1] All dates herein are 1982 unless otherwise indicated.

volving the various unions. That situation continued until 1967 when all of the unions were defeated in Board-conducted elections. Respondent has been nonunion since 1967.

There was a union campaign at Respondent in 1977 involving the Teamsters Union. The Teamsters Union was rejected in a Board-conducted election that was held on October 27, 1977, in Case 10–RC–11217. The United Steelworkers of America, AFL–CIO, conducted a union campaign at Respondent's facilities in 1979. The campaign culminated in a Board-conducted election in Case 10–RC–11676 on April 26, 1979. There were approximately 2500 eligible voters in the 1979 election of which 1182 voted for and 1170 against the Union with 82 challenged and 8 void ballots. The Board issued "A Certificate of Results of Election" on July 17, 1980.

### B. *Issues*

The issues herein are clearly drawn and are whether Ball engaged in any union or protected concerted activities, and whether he was discharged for his participation in any such activities. If it is found that Ball was discharged for having engaged in union and/or concerted activities, a secondary issue arises as to whether he engaged in any conduct that would necessitate his being denied reinstatement.

### C. *Positions of the Parties*

The General Counsel contends that Ball engaged in numerous activities on behalf of the Union in its most recent campaign at Respondent. The General Counsel contends that even though there was a lapse of time between the union campaign and the discharge of Ball, Respondent still harbored animus toward the Union in general and Ball in particular, and that his prior union activity was part of the reason for his discharge. The General Counsel also contends that Ball engaged in numerous activities that constituted protected conduct of a concerted nature and that because of those activities, Respondent considered Ball to be an agitator of labor unrest and discharged him. The General Counsel contends that Respondent indicated to Ball a few days before he was terminated that his protected concerted activities would not be tolerated. The General Counsel contended the conduct Ball engaged in on September 10 was protected in that Ball was merely voicing matters of concern regarding working conditions applicable not only to himself but also to his fellow employees, and that he spoke on behalf of his fellow employees at the meeting. the General Counsel contends that any comments Ball may have made after he was asked to leave the September 10 meeting were provoked by his discharge and did not constitute a threat of violence in any manner. The General Counsel also contends that Ball did not engaged in any conduct nor did he make any comments that would warrant his being denied reinstatement.

Respondent contends that Ball was discharge for two reasons neither of which was protected by the Act. Respondent contends one of the reasons for Ball's discharge was his insubordination and misconduct at an employee meeting on September 10. Respondent contends the other reason for Ball's discharge was that he made threats against the life of one of its supervisors prior to and after the September 10 employee meeting. Respondent further contends that the activities of Ball at the September 10 meeting were not protected concerted activities because they were of a personal rather than mutual nature. Respondent contends Ball's comments were an attempt by him to "vent his spleen" on management, and that he had no specific purpose in mind regarding his conduct at the meeting nor did his actions look to any group action, but were instead merely a showing of anger and griping on his part directed at management. Respondent further contends it had no knowledge of any union activity on the part of Ball. Respondent also contends it had no knowledge that any of Ball's activities were on behalf of anyone other than himself. Respondent contends that Ball's insubordination at the employee meeting on September 10 was a conscious, premediated, personal, degrading, vulgar attack on one of its supervisors.

Respondent contends that even if a violation of the Act should be found, Ball's misconduct has rendered him unfit for futher employment at Respondent.

For the reasons I shall set forth, I find that Respondent violated Section 8(a)(1) and (3) of the Act when it discharged Ball on September 10.

### D. *The Facts and Credibility Resolutions*

Ball commenced working for Respondent in 1969 while he was still in high school, and he continued his employment there until he was terminated on September 10. Ball had one break in his employment history and that was during the time he served a tour of duty with the military. Ball worked in the casemaking department first as a helper then as a expediter. Ball served a 5-year apprenticeship and became a journeyman operator. Prior to his discharge and because of economic considerations, Ball was reduced from an operator to an extra operator and then to a relief operator. At the time of his discharge, Ball was working as a relief operator. During Ball's entire work history, he never received any reprimands or warnings.

It is undisputed that Ball participated in the most recent (1979) union campaign at Respondent. Ball served as an in-plant organizer for the Union and wore a union pin and hat. Ball had stickers for the Union on his toolbox, handbilled for the Union, and sought to have his fellow employees sign union authorization cards. I credit Ball's uncontradicted testimony that on one occasion during the 1979 campaign, he asked Super Finish Department Supervisor Leland Sanders if he could raise a window because it was extremely hot. Sanders told Ball it would mess up the women employees' hair and, as such, he would not allow him to raise the window, but told him if he was as hot as he said he was, he could "take that damn union hat off and [he] would probably cool down."

Ball testified without contradiction that Supervisor Jack Sproles rated him down on his employee evaluation after the 1979 union election. Ball asked Sproles why, and Sproles told him it was because of his past activities.

Leonard Jaynes likewise testified, and I also credit his uncontradicted testimony, that following the 1979 union campaign, he was not satisfied with his employee evaluation, and because he was not, he spoke with Supervisor Sproles aobut it. Jaynes told Sproles his evaluation should have been higher. Sproles agreed with him, but told him his evaluation was as high as he could give him because he had supported the Union. Jayne told Sproles that Respondent was not supposed to hold that against him. Sproles responded to Jaynes that it did. Jaynes stated he later complained to Personnel Superintendent Tony Poe, and he was reevaluated by a different supervisor. Earle Grizzle, who was called as a witness by Respondent, testified that Supervisor Sproles told him he could not give him a better employee evaluation because he had struck his nose in the Union when it was there. Grizzle testified he was later reevaluated to his satisfaction by another supervisor.

According to Ball, there was yet another instance when the Union was discussed with him by management. That incident, which according to Ball resulted from a particular grievance being filed, will be discussed elsewhere in this decision along with various other grievances Ball filed.

It is undisputed (see R. Exhs. 14(a) through 14(r)) that Ball filed a number of written grievances[2] pursuant to Respondent's grievance complaint procedure. Additionally, Ball testified regarding grievances he filed for which no written correspondence was made available at the trial. These oral grievances will be discussed after the documented grievances. It is necessary with respect to the issue of concerted protected activity to examine the grievances in order to determine if they generally pertained to Ball alone or if they related to all employees situated in like positions as Ball.

Ball had a meeting with Respondent's executive vice president, Robert E. McNeilly Jr., on March 25, 1980, as documented by McNeilly's April 8 letter to Ball. The meeting was held so that Ball could express some work-related matters to McNeilly relating to layoffs, cutbacks, manning of shifts, rates to be paid different job classifications, a procedure for sharing work between senior and less senior employees, and cross-training of employees. Ball's suggestion with respect to cross-training of employees was adopted by McNeilly. (R. Exh. 14(b).) Ball's complaints clearly applied to employees other than himself.

On April 13, 1981, Ball filed a grievance with Respondent regarding his being reclassified to the position of extra operator. Ball also grieved the fact that such downward reclassifications resulted in a loss of seniority, the right to take voluntary layoffs, a loss of vacation time, and military pay, and impacted upon life insurance (R. Exh. 14(c)). Ball's grievance was answered by Respondent Sullivan Street Plant Manager William F. Johnson, in writing on May 11, 1981. Johnson discussed in his letter with Ball how reductions impacted on employees and stated he understood their concerns and referred the grievance to the next step in Respondent's complaint process. Again, Ball's grievance applied to employees other than himself.

Respondent's vice president of operations, James W. Bowery, responded to a grievance of employees Mike West and James Ball on June 25, 1981, regarding their complaints related to operators being cut back to helpers. Bowery informed West and Ball that he was in agreement with their position regarding the length of time it took to become a journeyman operator on certain types of machines. Bowery referred to higher management the question raised by West and Ball regarding whether an employee who had been cut back to a helper's base rate could purchase more than one and a half times their base pay in life insurance (R. Exh. 14(e)). Respondent concedes that this particular action constituted concerted protected activity on the part of the two employees involved.

Respondent's Exhibit 14(g) indicates Ball presented Executive Vice President McNeilly with a grievance in July 1981. As a result of McNeilly's review regarding Ball's complaint, it was discovered that a policy change regarding the status of cut back operators was being made at that time. Respondent's overall policy change covered Ball's problem according to McNeilly.

Ball filed a suggestion and a complaint (R. Exh. 14(h)) on September 28, 1981. In the suggestion, Ball pointed out a number of ways Respondent could improve its utilization of the casemaking machine parts. Ball's suggestions were adopted and implemented by Covered Manufacturing Superintendent Jim Johnson, and he so indicated that fact to Ball in a memorandum dated October 13, 1981 (R. Exh. 14(i)). Ball's complaint filed on the same date dealt with his relationship to Casemaking Department Supervisor Claude Akers. Ball claimed Akers had verbally assaulted him.[3] Plant Manager Johnson responded in writing on November 9, 1981, to Ball's complaint regarding the verbal assault. In his response, Johnson stated he had been unable to either confirm or deny Ball's allegations against Akers. Ball's concerns regarding utilization of machine parts clearly pertained to all employees.

Ball filed a grievance on December 12, 1981, pertaining to the hardships placed on journeymen operators who were reclassified to the position of extra operators, and he asked in his grievance if there was anyway such hardships could be avoided. Ball also complained about his own status in the grievance (R. Exh. 14(k)). It appears that Respondent addressed these complaints of Ball in a letter to him dated February 1. The letter was signed by Vice President of Industrial Relations Charles Doty and Executive Vice President McNeilly. Respondent referred to its overally policies in its response to Ball,

[2] Throughout the trial and in various of the exhibits, Respondent's complaint and suggestion procedure was referred to as a grievance procedure. I have adopted that same terminology in this decision.

[3] Ball testified, and I credit his testimony, that Akers told him he had some letters that Ball had written to management and that if he thought he was going to get Akers relieved from his position, he was an "asshole." Ball asked Akers what he was doing with the letters and statements; Akers told Ball it was none of his "goddam business." Ball complained of the cursing to Supervisor Sproles, and Sproles asked him, "what in the hell am I suppose to do." Ball then proceeded to Personnel Superintendent Poe's office and complained to him about the cursing.

and stated its overall policies would apply to Ball. The response stated in part:

> We are well aware of the impact that such a downward adjustment has on individual employees who through no fault of their own find themselves in such a position [being cut back from operator to relief operator] especially in such a case as yours [Ball's] where you have operated with competence for a number of years. [R. Exh. 14(n).]

It is clear that this grievance of Ball applied to employees other than himself.

Ball filed a grievance on January 15 in which he inquired how Respondent justified different rates of pay for individuals performing the same jobs on the same machines producing the same products, but at two separate locations of Respondent (R. Exh. 14(l)). Plant Manager Johnson, in a memorandum dated January 22, forwarded Ball's complaint to Vice President of Operations Bowery because it pertained to rates of pay for casemakers in two different plants of Respondent (R. Exh. 14(m)). Bowery addressed Ball's January 15 complaint in a letter to him dated March 16 (R. Exh. 14(o)). Bowery explained Respondent's rates for casemakers and he also explained how slack work impacted on such situations. Bowery pointed out that pay fell under Respondent's wide pay policies. Again, Ball's complaint was greater than and pertained to more than one employee.

Ball, along with 16 other employees, signed a grievance on July 8 complaining about certain work scheduling that had taken place in the casemaking department. Ball was the first employee to sign the grievance, and by comparing the July 8 grievance to the others prepared by Ball, I am persuaded the entire handwritten portion of the July 8 grievance was prepared by him. Covered Manufacturing Superintendent Johnson responded to the grievance in writing on July 17, and explained the necessity for the scheduling that the employees complained about (R. Exh. 14(q)). The grievance was appealed further on October 22. Plant Manager Johnson responded in writing to the appeal after Ball was discharged (R. Exh. 14(r)). It is without question that this grievance applied to employees other than Ball.

Ball credibly testified without contradiction that during the last 6 months of his employment, Supervisor Akers accused him of being a "trouble-making employee" and "a disgruntled employee" and told him "hey Ball, the door swings both ways, you know, don't let it hit you in the ass on the way out."

In addition to filing grievances, Ball credibly testified he also circulated certain petitions at Respondent. Ball testified that in 1981 the employees wanted to know who was going to be on a wage evaluation board that would set base wage rates for their department. The employees wanted some input into the decision-making process. Ball testified that he, along with a group of his fellow employees, met in the breakroom at the plant and discussed the matter, and it was suggested that he write up a petition to see if the employees could meet with management on the matter. Ball prepared such a petition and was the first one to sign it. Ball testified Covered Manufacturing Superintendent Johnson would not meet with the employees as a group but told them that one individual could file a complaint on behalf of the entire department. Ball testified, without contradiction, that he filed a complaint regarding Respondent's failure to allow the employees to meet with the wage evaluation board, and, in filing the complaint, he alleged it was a violation of Respondent's open door policy. Ball stated that thereafter a number of employees, including himself, was allowed to meet with Johnson about the matter. Ball's actions again appear to be on behalf of employees other then himself.

Ball also credibly testified that he and certain of his fellow employees discussed the fact that they felt one of their supervisors (Sproles) was not being treated fairly by management. Ball prepared and circulated a petition in June requesting a meeting with Plant Manager Johnson about the matter. Ball gave the petition to Covered Manufacturing Superintendent Johnson. Ball and others met with Plant Manager Johnson and told him they felt that Covered Manufacturing Superintendent Johnson and Casemaking Department Supervisor Akers were being unfair to Supervisor Sproles because of his relationship with the employees. Ball also told Plant Manager Johnson that Superintendent Johnson and Supervisor Akers were subjecting Ball to certain accusations, namely, that he was a "disgruntled employee," "an agitator of union activities," and suggested that he find employment elsewhere.

Ball testified he filed a number of grievances in the summer of 1982. Ball credibly testified that with respect to most of the grievances or complaints prepared by him, that he reduced them to writing because he had been told if he felt the matters were so "damn important" to write them down with the group. Ball testified most grievances he was involved with were written up in the breakroom at Respondent. Ball testified he would ask employee Beverly Wright to help him with his grammar and spelling on the grievances because she had previously been a secretary and was good at grammar and spelling.

Ball testified he had a meeting with Superintendent Johnson on July 15 regarding his reevaluation for wage classification and, in the meeting, Johnson told him he was a disgruntled employee. Superintendent Johnson also told Ball:

> James, he said, I am getting tired of you, you know, constantly, you know, at Union, you know, agitating you know, agitating this unrest in my department—this labor unrest in my department, it seems that you're always trying to undermind my authority, and don't you understand that I run this department, I'm here, and I'm going to be here until hell freezes over, and you're going to, you know, abide by what I say, and that is it.

Ball told Johnson that as long as he did his job, he thought he had a right to express his opinion. According to Ball, Johnson, responded that he could express his opinion but "by God, you know, he was getting tired of

me agitating other people." Johnson told Ball if he did not like it, he could find work elsewhere.

Johnson did not deny any specific meetings with Ball but simply denied over discussing the Union with him at any time. I discredit Johnson's denial. After observing Johnson testify, I am persuaded that any place his testimony is contradicted or not corroborated that it should be discredited. A number of factors persuade me that my observations regarding Johnson's testimony are correct. For example, I find unbelievable Johnson's testimony that he never saw Ball wear any union insignia in the plant. Respondent, in its brief, concedes that Ball wore union insignia on his person and his toolbox. Other management representatives (Poe and Akers) acknowledged that Ball wore union insignia. I find even less believable Johnson's testimony that he did not oppose the Union in the latest union campaign and did not care how the employees voted. Further, I do not believe Johnson's testimony that even though the personnel superintendent had asked supervisors to provide him with a weekly poll of how they felt the employees would vote during the Union's latest campaign, that he, Johnson, did not participate in that activity and this his supervisors reported directly to Personnel Superintendent Poe instead of coming through him with their reports of union strength at Respondent. These are just some of the examples that persuade me that Johnson's testimony is unworthy of belief.

Ball prepared a grievance on July 18 pertaining to a reduction in the number of supervisors at Respondent's facility. Ball testified he prepared the grievance after meeting and discussing the matter with his fellow employees in the breakroom. It is undenied Ball gave the grievance to Supervisor Sproles who responded by saying, "God damn, what in the hell am I going to do if I get cut back." Sproles them made a "beeline" for the office.[4]

I credit Ball's testimony that he met with Covered Manufacturing Superintendent Johnson on July 21, regarding the grievance pertaining to a reduction in the number of supervisors. Johnson asked Ball to explain the "damn" suggestion. Ball explained that Respondent could combine two different departments and use only one foreman and that the one foreman would be supervising less than a normal work force. After a loud pause, Johnson replied:

> I don't know where in the hell you get off, you know, trying to tell me how to run this damn department, I'm getting sick and tired of you, and them others, Union or not, trying to tell me how to run this damn department. And, he said, James, by God if you, you know, if you don't like it, I wished the hell you'd go somewhere else.

Ball told Johnson he had worked for Respondent for 14 years and was not interested in going elsewhere, but that if Respondent was really interested in saving money, no one, including supervisors, should be excluded from cost-saving measures. Johnson then told Ball he did not gave a "damn" what he thought and if he did not like the "damn" working situation to go elsewhere. Johnson than told Ball he was "the biggest damn Union agitator he had ever seen in his damn life." I credit Ball's testimony as outlined above. As indicated elsewhere in this decision, I do not credit Johnson's testimony that he never discussed the Union with Ball.

I credit Ball's uncontradicted testimony that he spoke with Personnel Superintendent Poe in Poe's office on August 29 regarding his treatment by Superintendent Johnson. Ball told Poe that Johnson was biased and paranoid toward him and accused him of being a disgruntled employee and a troublemaker. Ball informed Poe he did not know why Johnson made the accusations against him, that he did not know if Johnson still held his union activities against him or if it was because he filed so many grievances. Ball pointed out to Poe that a number of Johnson's decisions on his grievances had been overturned by higher management, one of which resulted in Ball's receiving backpay. Ball told Poe that he had requested a transfer out of Johnson's department, but had never received any feedback on his request.[5] Ball told Poe he had also made a number of what he thought were good suggestions to Johnson about the department, but he had not received any feedback from Johnson on his suggestions. Ball also told Poe he did not want to file any more grievances with Johnson. Poe told Ball that if he had any other grievances to file, he could file them directly with him.

Ball testified that, after his meeting with Poe, Johnson called him into this office on September 7 for a meeting and told him the meeting was in response to Ball's meeting with Poe or other management officials. Johnson then went systematically over a number of suggestions with Ball that Ball had made. Johnson told Ball what Respondent's position was on a number of the suggestions he had made. Johnson told Ball his requested transfer could not come about because of a cutback in work, but if a position became available he would let him know. Johnson told Ball that would be all. As Ball was leaving Johnson's office, Johnson told him, "James, he said . . . if you keep this up . . . its either you or me going." Ball was discharged 3 days later.

Johnson did not specifically deny the conversation Ball attributed to him as having taken place 3 days before Ball was terminated. I credit Ball's testimony regarding the September 7 conversation he had with Johnson.

The next significant event involving Ball at Respondent took place on September 10. It is undisputed that an employee meeting involving the second-shift casemaking department employees took place in the afternoon hours on September 10. Supervisor Akers testified that just

[4] I credit the undenied testimony of employee J. C. Russell that Supervisor Sproles told him when they were discussing reduction in supervisors after Ball had left the discussion that all Ball ever did was "bitch, bitch, bitch . . . that's all he ever does . . . that's the biggest trouble maker we've got down here in casemaking . . . it if wasn't for him . . . things would run a whole lot smoother if he was gone."

[5] Poe testified that he had not recommended Ball for transfer because of Ball's attitude toward Respondent.

pior to the employee meeting Ball asked him if Superintendent Johnson would be present for the meeting. Akers told Ball he was not sure whether Johnson would be present or not. Akers testified Ball told him that he wanted the "son-of-a-bitch" to be there.[6] Ball denied making any such remark. Ball, by his superior demeanor, impressed me as a witness who was making every effort to tell the truth. Ball sometimes answered more than was asked of him when questioned at the trial, and he had to be admonished in that regard. Nevertheless, I do not find that to detract from his overall truthfulness. Although his persistence with respect to working conditions may have made him a thorn in Respondent's side, such did not lessen his desire to testify truthfully. As will be noted elsewhere in this decision, Ball may have been the loudest and longest speaker at the September 10 meeting, but such does not detract from, but rather, under the circumstances of this case, enhances his credibility. In contrast to Ball, I did not generally find Akers to be a credible witness. Akers' credibility will be discussed more fully at that portion of this decision dealing with threats that Ball allegedly made. Accordingly, I find that Ball did not say prior to the September 10 meeting that he wanted that "son-of-a-bitch [Johnson]" to be present. I discredit any testimony to the contrary.

Ball testified that the employees had heard on September 8 there would be a meeting on September 10 regarding changes that were to take place in their department. Ball, along with other of his fellow employees, met in the breakroom at the plant prior to the start of their shift on September 10 and discussed reductions in force, layoffs, transfers, wage reductions, and terminations. In addition to Ball, J. C. Russell, Charles Jarrett, Earle Grizzle, and Mike Salyers were present along with others at the meeting prior to the start of the shift on September 10. Ball testified they discussed why the older operators could not take voluntary layoff instead of making the helpers take forced layoff. Ball indicated to the group he would raise that question at the work shift meeting. The other employees present at the meeting were in agreement with Ball about his raising that matter at the meeting.[7] According to Ball, whose testimony I credit, other employees talked about questions they were going to ask at the work shift meeting. Ball stated that Supervisor Sproles was present for part of the time that the breakroom meeting was going on.

The meeting for the second-shift employees was held immediately after the shift started on September 10. In addition to Ball, employees Earle Grizzle, Kenneth Bourbon, Chris Smith, Marvel Watterson, Leonard Jaynes, Vonnnie DeBord, Paul Gillenwater, Danny Davenport, J. C. Russell, Johnny Lane, Frank Kincaid, Robert Ashworth, Bernice Chapman, Linda Hurd, Beverly Wright, Mike Salyers, Charles Jarrett, and Doug Rose attended the meeting. Supervisor Akers and Superintendent Johnson were present for Respondent at the meeting. Each of the above-listed individuals testified at the trial except employees Rose, Jarrett, Salyer, and Wright. Each of the individuals that testified regarding the meeting gave a somewhat different version of what was said and by whom. Some of the differences were slight while others were extreme. Because of so many different versions of what was said and by whom, I have very carefully weighed the testimony, and my ultimate choices in making findings of fact are based on my observation of the demeanor of the witnesses and the weight of the respective evidence provided by them, considered in conjunction with established or admitted facts, inherent probabilities, and reasonable inferences which may be drawn from the record as a whole. With respect to the testimony, I have borne in mind the tendency of witnesses in general to testify as to their impressions or interpretations of what was said rather than attempting to give a verbatim account of matters. Further, I am mindful that even in the case of persons testifying about their own remarks, the persons may well tend to express what they said or intended to say in clearer or more implicit language than they actually used in their comments or discussions. As to any witness having testified in contradiction of the findings herein, their testimony has been discredited either as having been in conflict with the testimony of credible witnesses or because it was in and of itself unworthy of belief. All testimony has been reviewed and weighed in light of the entire record.

Ball testified he entered the meeting and sat at the same table with Supervisor Akers and Superintendent Johnson. Akers opened the meeting by saying he was sorry the changes had to happen, but there was not a "damn" thing he could do about it. Akers then informed the employees that were involved of whatever action—layoff, transfer, reassignment—that pertained to them.[8]

Superintendent Johnson then took over the meeting and opened it up for any discussions regarding the policies behind the changes that had been announced. Employee Mike Salyers asked about his being reduced from a driver to a helper. Salyers stated to Superintendent Johnson, "[M]other fucker . . . now that you don't have to worry about the Union you're treating us like shit." A number of those present said, "[H]ell yes" and "[D]amn right" at that time.[9] Ball credibly testified that employee Charles Jarrett spoke up at that point and said, "[W]ell, hell, Jim [Superintendent Johnson], you know yourself that this department was one of the most outspoken de-

[6] Employee Vonnie DeBord, who was called as a witness by Respondent, corroborated Akers' testimony.

[7] Employee Leonard R. Jaynes testified that Ball helped others in wording, writing, and preparing grievances that were discussed from time to time in the breakroom. Jaynes stated others sought Ball out to help them to prepare their grievances. J. C. Russell testified that Ball generally acted more or less as spokesperson for the rest of the employees. Russell testified, "[I]t seems like they would always wind up sticking it on James [Ball] to take it in there to [Superintendent] Jim Johnson." Russell testified everyone looked up to Ball in this respect. Employee Grizzle stated Ball was the one who had the nerve to talk up to management about concerns of the employees.

[8] When Akers came to Ball's name on the roster, he informed Ball that his status would remain unchanged. All parties agreed that Ball's status was not affected by the changes announced at the meeting.

[9] I credit Ball's testimony with respect to the comments he attributed to Salyers. Ball's testimony in this regard was in all essential parts corroborated by employees Jaynes, Russell, and DeBord. Employees Kincaid, Watterson, Hurd, and Gillianwater stated that Salyers was upset because he was being cut back from one position to another. Superintendent Johnson acknowledged that Salyers asked about and was quite upset with his reduction.

partments in the whole damn Union campaign, and it looks like you're finally getting even."[10] There were outbursts at that point of "hell yes" and "damn right." Leonard Jaynes then spoke up and said, "[Y]eah, they're finally getting even all right, they're shafting us again."[11] According to Ball, employee Grizzle asked Superintendent Johnson about changes that had been made on the casemaking machines. Grizzle asked Johnson how they were going to be able to keep up production with the changes that had been made and with the reductions in help. Johnson stated production would be maintained or Respondent would find someone who could. According to Ball, Grizzle told Johnson, "Well, hell, I'd like to see you do it."[12] Ball testified Johnson again took over the meeting and stated, "[Y]ou people are just going to have to learn to live with this cut-back, and these layoffs . . . hell, its just damn part of life, why hell, I don't even know if I'm going to be here tomorrow." A number of those present spoke up simultaneously, with Mike Salyers saying, "[H]ell, we'll throw a damn party"; Bevery Wright stated she would bake a cake; Charles Jarrett stated it would be the best thing that ever happened to Respondent; and Leonard Jaynes said he would say "amen" to that.[13] Ball testified he commented that he would not be sorry to see Superintendent Johnson go. Johnson told Ball he was "glad to see [him] so openly honest."[14] Ball, Jaynes, and Russell credibly testified additional questions were asked at this point in the meeting regarding what was taking place at Respondent. Ball spoke up and characterized the situation as "this friggin mess"[15] and then asked Johnson why some of the extras and journeymen operators were not allowed to take voluntary layoffs instead of sending the helpers out of the department. Johnson told Ball it could not be done; Ball responded it was "inept" or "poor" management. Johnson told Ball he was out of order and to either calm down or leave the meeting. Ball thanked Superintendent Johnson, placed his chair under the table, and returned to his work station.[16]

Employee Russell testified certain employees looked up to Ball when it came to presenting their questions or grievances to management. Russell stated that those present at the September 10 meeting that he knew of that looked up to Ball other than himself were Leonard Jaynes and Charles Jarrett. Employee Jaynes testified that, although he had not asked Ball to speak on his behalf at the September 10 meeting, Ball was in fact speaking for him on "a lot of the issues and policies."

It is undisputed that a few minutes after the meeting ended Supervisor Akers came to Ball's work station and escorted Ball to Superintendent Johnson's office. Ball testified that, as soon as he entered Johnson's office, Johnson told him that, because of his activities at the meeting, he was to give his pass to Akers, and that he was terminated.[17] Ball asked why, and Johnson told him he would not argue with him to just turn over his pass and be in Plant Manager Johnson's office the next week.

Akers and Ball walked from Superintendent Johnson's office to Ball's work station where Ball obtained his toolbox. According to Ball, Akers told him he did not have to take his toolbox and stated, "[H]ell, I don't think anything is going to come of this." Ball left his toolbox with fellow employee Russell.[18] Akers acknowledged that Ball did not carry his toolbox from the plant, but he did not recall Ball speaking to Russell about it, nor did he remember telling Ball anything about his toolbox. I credit Ball's tesimony.

Akers testified he and Ball walked mostly in silence out of Respondent's facility. Akers stated Ball maintained his composure and did not act "mad or anything." Akers testified, "James [Ball] told me that when he came back in on Tuesday for his meeting, that . . . if he was fired, that he wouldn't have to be walked out of the plant, that he would have to be carried out."

Ball testified to a much different departure from the plant. Ball testified that, as he was leaving with Akers, he began to realize what was happening to him and as that realization hit him, he "started cussing a blue streak" saying, "God damn it," "[M]other fucker," and other ramblings. Ball stated he was still rambling on by the time he arrived at his home. Ball testified he never made a threat against Superintendent Johnson's life at any time, nor did ne ever put his hands on Johnson in anger, move toward him, or go to his home.

[10] I specifically discredit Superintendent Johnson's statement that Jarrett did not say a word at the meeting. As elaborated on elsewhere in this decision, Johnson did not impress me as a reliable or trustworthy witness.

[11] Jaynes acknowledged making the comment attributed to him by Ball and, as such, I credit Ball's testimony that it was Jaynes who made the comment about being shafted, and I discredit any testimony to the contrary.

[12] I credit Ball's testimony which was corroborated by Jaynes, Russell, DeBord, and Grizzle himself.

[13] Ball's testimony in this respect was corroborated by that of employees Jaynes, Russell, Kincaid, Gillianwater, and DeBord. Employee Grizzle recalled Wrights' statement about baking a cake and employee Lane recalled Johnson saying he might not be there the next week. I give no credence to Supervisor Akers' statement that he did not recall any employees saying they would have a party regarding Superintendent Johnson's indicating he might not have a job there the next week. Akers did concede that Johnson made the statement that he might not have a job with Respondent the next week.

[14] Ball's testimony was corroborated by Russell. I discredit Superintendent Johnson's testimony that Ball said he did not see why Respondent did not fire Johnson. I do so because I am persuaded Superintendent Johnson either misunderstood Ball's statement about not being sorry to see him go or Johnson deliberately misspoke the truth in his testimony at the trial. I am persuaded that Lane and Smith likewise misunderstood or misspoke the truth when they testified that Ball said he wished Superintendent Johnson would be removed or moved out. I also discredit Johnson's and Akers' testimony that Ball said Johnson had been shafting him ever since he had been in the department. I discredit Bourbon's testimony that it was Ball who mentioned being shafted beause Bourbon was responding to very leading questions by Respondent's counsel. The credited evidence establishes that it was employee Jayne who mentioned being shafted at the meeting instead of Ball.

[15] I am fully persuaded that Ball addressed himself to "this friggin mess" and not, as reflected in testimony that I discredit, that he mentioned that management was "friggin" either secretaries or CSR employees on the side or that Superintendent Johnson was "friggin" someone or was a "fucking bastard."

[16] I credit Ball's testimony that during his questions with Johnson at the meeting he used the words "damn" and "hell" but that he never at any time asked if management was wiping their hindend or "ass" with his earlier suggestions.

[17] Johnson stated he told Ball he was only suspended and to report back to Respondent the following week. I find it unnecessary to determine whether Johnson said terminated or suspended.

[18] Russell testified Ball asked him to take care of his toolbox.

It is, in my opinion, difficult to reconcile the two versions of Ball's termination walk from the plant. This was not an occasion where one of the witnesses could have misunderstood or misinterpreted what the other said because one claims there was silence with a calm statement made which he considered to be a threat, while the other version is that the individual left the plant cursing angrily. After carefully observing both Ball and Akers testify, I have generally credited Ball's testimony, and I do so here to the extent that he was cursing as he left Respondent's facility. It is without question on the status of this record that the casemaking department was given to vulgar and obscene language both by the rank-and-file employees as well as the supervisory personnel. Therefore, it is very probable that Ball engaged in the language he stated he did as he left the plant. It is also very probable, and I find, that Ball said in his anger the statement Akers attributed to him.

Some of Respondent's witnesses testified about other threats they claimed Ball had made at one time or another. Akers testified that employee Gillianwater told him on one occasion at some point that Ball had said he would blow Superintendent Johnson away. Akers stated he told Superintendent Johnson about Gillanwater's statement sometime between September 10 and 17 after Ball had been discharged. Gillianwater, Respondent's witness, testified, after specific questioning on the point, that he never told anyone about his conversation with Ball. Gillianwater did not know when the conversation took place, but stated that Ball told him, "He'd blow him away, or something like that." Gillianwater stated "I reckon" Ball was referring to Superintendent Johnson. Ball testified he never threatened Superintendent Johnson at any time. I find that Gillianwater, although uncertain as to what was said to him by Ball, mentioned Ball's conversation to Supervisor Akers even though he testified he never told anyone about the conversation. I am persuaded that he mentioned something about a conversation he had with Ball to Akers; otherwise, Akers would not have known of it to tell Superintendent Johnson about it.

Superintendent Johnson testified Ball made what he considered to be a threat some time prior to the September 10 meeting, but, as to how long before the meeting, he could not be certain.[19] Johnson testified Ball said, "[I]f anyone took food out of his kids' mouth that he would bring a gun in there." Johnson testified Ball made the comment when he discussed with him his being cut back from a regular operator to a relief operator. Johnson testified that, since Ball was an exserviceman and belonged to the National Guard, he knew Ball had access to guns. According to Johnson, no one was present at the conversation except Ball and himself. Johnson testified he did not report Ball's threat to anyone because he did not think much of it at the time. Ball denied ever making any threats. As set forth elsewhere in this decision, I do not credit Ball's testimony with respect to what he said as he left the plant on September 10. I do not credit his testimony about this incident because he testified he was angry, and he do not know what he had said. Notwithstanding the fact that I do not credit Ball's testimony about this incident, I do credit his denial with respect to the conversation Superintendent Johnson attributed to him. I credit Ball's testimony because, after observing Johnson testify, I am persuaded he did not tell the truth about the conversation.[20]

Superintendent Johnson told Personnel Superintendent Poe on September 10 about the situation involving Ball that had taken place at the September 10 meeting. Poe instructed Superintendent Johnson to suspend Ball pending an investigation. Poe conducted an investigation in which, at one time or another, he interviewed the employees that had been present at the same meeting Ball had attended.

On September 14, Poe met with Ball in Plant Manager Johnson's office to have Ball tell him his version of the September 10 meeting. Poe testified Ball told him he had spoken in a loud voice at the meeting, and he had said at one point during the meeting he thought management was inept. Poe testified Ball told him six or seven others employees had also spoken up at the meeting. Ball told Poe he thought he should not be terminated, and that he had suffered enough at home because of comments his wife had made. Ball told Poe he would beg for his job back if it was necessary.

Poe testified he completed his investigation into the matter on September 15. Poe then met with Superintendent Johnson and Plant Manager Johnson, and it was decided by the three of them that Ball should be discharged based on his insubordinate conduct at the meeting and also on the threats that he made toward Superintendent Johnson. Poe and the Johnsons discussed their decision with Vice President of Industrial Relations Doty and Vice President of Operations Bowery on either the afternoon of September 16 or the morning of September 17. Doty and Bowery concurred with the decision to terminate Ball.

Poe testified after the meeting with Doty and Bowery he wrote out for Superintendent Johnson what he was to tell Ball over the telephone when he terminated him. Poe stated he wrote down what Superintendent Johnson was to say because "I wanted to make sure that as far as possible . . . he told Mr. Ball what he needed to tell him,

[19] Johnson first stated he did not remember how long before the September 10 meeting the conversation took place, and that possibly it could have been 8 months or so before the meeting. When pressed further for a date, Johnson placed the conversation at approximately 6 to 8 months before the September 10 meeting.

[20] Respondent presented group leader Billy Shelton as a witness. Shelton testified that, after a meeting sometime in 1981 concerning cutbacks taking place at that time, Ball came out of a meeting with Superintendent Johnson and, after returning to his work station where Shelton was, stated, "[I]f that mother fuckin' son-of-a-bitch does anything to me I'll blow his brains out." Shelton further testified: "He [Ball] did not say [Superintendent] Jim Johnson; he just said that statement." Shelton testified the first time he told anyone in management about the conversation was on June 10, 1983. Respondent in its brief acknowledges it had no knowledge of the conversation testified to by Shelton until preparation for trial of the instant case. Ball specifically denied the statements attributed to him by Shelton. Based on Ball's superior demeanor, I credit his testimony that he never made the statements attributed to him by Shelton. Furthermore, if Shelton's testimony were credited, it is too uncertain that Ball was speaking about Johnson to be considered a threat against Johnson. Furthermore, if Shelton's testimony was credited, Respondent could not rely on it in any manner inasmuch as it ony learned of the conversation while preparing for the trial herein.

so, I wrote . . . a termination discussion for him to follow." Poe testified he listened in on an extension phone as Superintendent Johnson read the termination statement to Ball on the telephone. Both Poe and Superintendent Johnson acknowledged that the subject of threats was not mentioned to Ball as a reason for his discharge in that conversation.[21] Poe testified he did not include the threats in the notes he prepared for Johnson to read from because he did not want Johnson telling Ball he was being discharged in part because of threats he had made against Johnson. Poe testified he then wrote Ball a two-page letter. Poe specified in the letter why Ball was discharged. The reasons contained in the letter for the discharge are as follows:

> To confirm the conversation which Mr. Jim Johnson, Covered Manufacturing Superintendent, had with you on September 17, 1982, your employment with Kingsport Press has been terminated effective September 17, 1982, for conducting yourself in a insubordinate manner during an employee meeting by:
>
> 1. Disturbing the meeting being conducted by Mr. Claude Akers and Jim Johnson on September 10, 1982, relative to layoffs and manning changes that would take place on Monday, September 13, 1982.
>
> 2. Using abusive and derogatory language toward Mr. Jim Johnson and other members of Kingsport Press management.
>
> 3. By using profane and vulgar language in the presence of female employees who were attending the meeting. [R. Exh. 10(a).]

Poe testified he did not mention any threats in Ball's termination letter because he prepared the letter from the notes he had made for Superintendent Johnson to read from on the telephone when he discharged Ball. Poe also stated no mention was made of the threats because Respondent did not wish to place a stigma on Ball's future employment efforts. After Ball's termination, Poe arranged for Ball to meet with Vice President of Operations Bowery and Vice President of Industrial Relations Doty on September 23.

The meeting on September 23 was attended by Doty, Bowery, Ball, and employee J. C. Russell. Bowery opened the meeting by asking Ball to state his version of what had transpired at the September 10 meeting. According to Doty and Bowery, Ball outlined what had happened, and he was then asked if he made any threats against Superintendent Johnson as he left the plant on September 10. Doty testified Ball said he probably had and probably threatened some other people also. Bowery stated Ball said he might have threatened someone. Ball denied ever making any such admissions to Bowery and Doty. Employee Russell could not recall any threats being mentioned at the meeting. In evaluating the testimony with respect to the credibility conflict that exists as to whether the subject matter of threats was discussed, I have weighed and considered certain facts. Respondent had as of September 19 retained the services of a Pinkerton detective to guard the home of Superintendent Johnson during the dark hours. The detective guarded Johnson's home from September 19 until September 30 at a cost of $2,114.12. Such action on the part of Respondent might tend to indicate or suggest that the subject matter of threats was discussed at the September 23 meeting inasmuch as Respondent had already retained the services of a guard to secure the superintendent's home. However, there is the fact that Respondent never, in writing nor during its oral termination conversation, mentioned any threats to Ball which might tend to indicate that the subject matter of threats was not discussed at the September 23 meeting. Therefore, in resolving this particular credibility dispute, I do so on the basis of demeanor. I have discussed Ball's overall demeanor elsewhere in this decision. I find that the subject of threats was not raised at the September 23 meeting.

It is undisputed that Ball later had a meeting with Executive Vice President Montgomery in Montgomery's office regarding his discharge. Ball testified, and his undisputed testimony is credited, that Montgomery never mentioned any threats to him in his discussion with him about the events surrounding his discharge.

### E. *Analysis, Discussion, and Conclusion*

In making a disposition of the instant case, it is necessary to determine if any conduct engaged in by Ball constituted concerted activity that would be protected by the Act. For Ball's activities to have been protected they must have been of a concerted nature relating to terms and conditions of employment. Ball clearly had filed grievances that dealt with layoffs, cutbacks, and manning of shifts, which are matters that pertain to conditions of employment and are objectives which employees can seek to improve through activities protected by the Act. Ball, for example, had met with Executive Vice President McNeilly in 1980 and had discussed a number of work-related problems common to all employees with one of Ball's complaints relating to cross-training of employees being adopted by Respondent at that time. In May 1981, Plant Manager Johnson, in responding to one of Ball's grievances, stated he knew and understood how reductions impacted on employees. Thus, it is clear that management considered Ball's grievances to encompass more employees than Ball. The concerted nature of Ball's protected activities is again demonstrated by Vice President of Operations Bowery's reply in June 1981 to a joint grievance by Ball and fellow employee West regarding employees being cut back when Bowery referred to higher management for a decision that portion of the joint grievance which related to whether employees who were cut back could purchase additional life insurance. Again, the concerns of Ball and his fellow employee West involved conditions of employment pertaining to all employees. Ball's grievance in 1982, regarding individuals doing the same job on the same type machines producing the same product but at different rates of pay, was referred by management to a higher level of management because it involved rates of pay at Respond-

[21] The notes that were prepared by Poe and read from by Johnson make no mention of any threats (R. Exh. 17).

ent's different plants in the Kingsport, Tennessee area. This again clearly demonstrates that Ball's grievances pertained to concerns that involved policy changes with respect to working conditions. Further, the grievance of July 8 signed by Ball and 16 of his fellow employees pertained to scheduling in the casemaking department and as such pertained to working conditions for all employees of the department and not just Ball alone.

It is quite clear from this record that Respondent, and particularly Superintendent Johnson and Supervisor Akers, considered Ball's concerted activities to make him a "troublemaking" and "disgruntled" employee. Ball not only filed grievances that addressed employee concerns in general, as well as his own, but he also circulated petitions seeking to improve working conditions. For example, Ball circulated a petition requesting a meeting with management regarding input into the wage evaluation board; not only did Ball prepare the petition, but he was the first to sign it. Upon management's unwillingness to meet with the employees as a group, Ball filed a grievance stating that such failure to meet with the employees as a group violated Respondent's open-door policy. The concerted nature of Ball's activities is further demonstrated by the fact the he would meet with his fellow employees in the breakroom for the purpose of drafting grievances or petitions, and he would even have fellow employees check spelling and grammar on the grievances or petitions. Respondent's displeasure with Ball's concerted protected activities is in part demonstrated by the fact that, in 1982 when he filed a grievance regarding a reduction in the number of supervisors as a cost-saving measure to Respondent, one of the supervisors stated that Ball bitched all the time, was a troublemaker, and, if it was not for him, the department would run a lot smoother. In July 1982 when Ball met with Superintendent Johnson regarding that same grievance, he was told by Johnson that he was sick and tired of him and his activities, and Johnson further told Ball he was the biggest "damn" union agitator he had ever seen in his life. Superintendent Johnson had told Ball earlier that he was tired of his agitating and creating unrest in the department. It is clear that the activities which Ball engaged in were of a concerted protected nature, and it is further clear that the activities of Ball caused discomfort to Respondent, particularly to Superintendent Johnson.[22]

It is also clear that Ball recognized Respondent treated him differently because of either his concerted or his union activities. Ball complained to Personnel Superintendent Poe about his treatment by Superintendent Johnson and stated to him that he did not know if Johnson was holding the Union against him or if it was because he had reversed Johnson in some of his grievances. The evidence indicates that Ball's meeting with Poe in which he complained about Johnson's conduct toward him was somewhat of a last straw for Ball with Johnson. Johnson thereafter on September 7 met with Ball, went over a number of grievances that Ball had filed, which pertained to conditions of common concern to the employees of the department, and informed Ball that he was going to keep it up until one of them was going to have to go. Three days later, Johnson's predictions came true, and Ball was discharged. The evidence not only demonstrates that Respondent was uncomfortable with and annoyed by the concerted protected activity of Ball, but the evidence further establishes that Respondent had and still harbored animus toward Ball for his prior union activities. As discussed elsewhere in this decision, there can be no question but that Respondent was aware of Ball's union activities. It is, likewise, abundantly clear that Respondent through its supervisors harbored animus toward the Union. For examples, Supervisor Sanders told Ball that he could cool down if he would take off his "damn union hat." Employee Sproles rated certain employees lower on their evalutions because of their past union activities. And, although there was a lapse of time between the union campaign and Ball's being discharged, it is quite clear that Respondent still held Ball's union activities against him. Superintendent Johnson, for example, told Ball in July that he was the "biggest damn union agitator" he had ever seen in his life. It is, likewise, clear that Superintendent Johnson was annoyed by and concerned with Ball's raising work-related problems with him. It is clear that Ball was raising work-related problems on behalf of other employees because, as employee Russell testified, Ball was the one with the courage and nerve to speak up to management about work-related problems.

On the basis of the above, I find the General Counsel has established a prima facie showing sufficient to support an inference that Ball's protected activity was a motivating factor in the decision to discharge him. *Wright Line*, 251 NLRB 1083 (1980); and *NLRB v. Transportation Management Corp.*, 103 S. Ct 2496 (1983). Taking the *Wright Line* analysis foward, it is incumbent on Respondent to persuasively demonstrate that it would have discharged Ball even in the absence of the protected conduct. This, I find, Respondent failed to do.

Respondent contends that Ball was discharged for two reasons: his conduct at the September 10 meeting and his threats against Superintendent Johnson. In the context of the September 10 meeting, Ball's conduct was no better or worse than any other employee's conduct at the meeting. Profanity was used by Superintendent Johnson, for example, when he told the employees regarding their layoffs that "hell, its just a damn part of life," and that they would have to get use to it. Employee Salyers used the word "mother fucker" in addressing Johnson and indicated to him that the employees were being treated like "shit." No action was taken against Salyers. Likewise, employee Jaynes spoke up at the meeting and said, "[T]hey're [management] shafting us again," yet no action was taken against him. Ball's description of the situation as being a "friggin mess" and that management was "inept" or "poor" was not, in my opinion, any more offensive or vulgar than the language used by management representatives or other employees at the meeting. The one conclusion that is clear from all of this is simply that Superintendent Johnson seized on Ball's comments as a convenient excuse to rid himself of an employee

[22] Superintendent Johnson testified it took a large amount of time to process and consider the grievances filed by Ball.

whose concerted protected and union activities had become a definite annoyance to him.

Threats as constituting a reason for Ball's discharge do not withstand close scrutiny. I am persuaded that the comment Ball made as he was being escorted from the plant was too ambiguous to constitute a threat, and Respondent simply seized on it as an afterthought. Threats were not mentioned as a reason for Ball's termination when Respondent advised him of his termination in a telephone conversation, nor was there any mention of threats in the letter Respondent sent to Ball advising him of the reasons for his termination. Further, Respondent's statement of position to the General Counsel dated February 17, 1983 (R. Exh. 2(a)), made no mention of threats as a reason for Ball's discharge. A further indication that Respondent did not initially consider the comments of Ball to be a threat is the fact that Respondent did not hire a guard for Superintendent Johnson's home until 9 days after the conversation occurred. The earlier threat that Respondent would rely on was simply a subterfuge brought forward by Respondent in an attempt to bolster its reasons for discharging Ball.

The record is clear that Ball was considered by Respondent to be a troublemaker and a disgruntled employee because of his union activities and his repeated complaints involving working conditions. The comments between Superintendent Johnson and Ball at the September 10 meeting provided Respondent with a convenient excuse to rid itself of an employee whose union and protected activities had become a definite annoyance.

Accordingly, I find that by discharging Ball Respondent violated Section 8(a)(1) and (3) of the Act.

## CONCLUSIONS OF LAW

1. Kingsport Press is an employer engaged in commerce and operations affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. United Steelworkers of America, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. By discharging its employee James Earl Ball on September 10, 1982, because of his membership in, and activities on behalf of, the Union, and because he engaged in concerted activities with other employees for the purposes of collective bargaining and other mutual aid and protection, Respondent violated Section 8(a)(1) and (3) of the Act.

4. The unfair labor practices set forth above are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

## THE REMEDY

I have found that Respondent has engaged in certain unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act. I shall recommend that it cease and desist therefrom and take certain affirmative action to effectuate the policies of the Act.

With respect to the necessary affirmative action, it is recommended that Respondent offer James Earl Ball unconditional reinstatement to his former position of employment or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges he previously enjoyed. It is also recommended that Respondent make James Earl Ball whole for any loss of pay which he may have suffered as a result of his unlawful discharge. Backpay for Ball, and interest thereon, shall be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and *Florida Steel Corp.*, 231 NLRB 651 (1977). See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962). It is further recommended that Respondent expunge from its records any reference to its discharge of Ball and that Respondent notify Ball in writing that this has been done and that evidence of his unlawful discharge will not be used as a basis for future personnel action against him. See *Sterling Sugars*, 261 NLRB 472 (1982). Finally, it is recommended that Respondent be ordered to post a notice to employees attached hereto as "Appendix" for a period of 60 consecutive days in order that employees may be apprised of their rights under the Act and Respondent's obligation to remedy its unfair labor practices.

On the foregoing findings of fact and conclusions of law and on the entire record, I issue the following recommended[23]

## ORDER

The Respondent, Kingsport Press, Kingsport, Tennessee, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging and thereafter failing and refusing to reinstate its employees because of their membership in, or activities on behalf of, the Union and because they have engaged in concerted protected activities with other employees for the purposes of collective bargaining and other mutual aid and protection.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action to effectuate the policies of the Act.

(a) Offer James Earl Ball immediate and full reinstatement to his former position of employment or, if his former position of employment no longer exists, to a substantially equivalent position of employment, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of earnings he may have suffered by reason of the discrimination against him in the manner set forth in the section of this decision entitled "The Remedy."

(b) Expunge from its files any reference to the September 1982 discharge of James Earl ball, and notify him in writing that this has been done, and that evidence of his unlawful discharge will not be used as a basis for future personnel action against him.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards,

[23] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of the recommended Order.

(d) Post at its Kingsport, Tennessee facilities copies of the attached notice marked "Appendix."[24] Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[24] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."